

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

Misc. Petition No. 2780 OF 1992

PETITIONER

Gopal Prasad Shrivastava son of Shri Kuldeep Sahai, resident of Ramanujganj, Tehsil Ramanujganj, Tehsil Ramanujganj, district Surguja.

Vs.

RESPONDENTS

1. State of Madhya Pradesh through the Department of Land Revenue, Govt. of Madhya Pradesh, Bhopal.
2. Collector, Surguja, Surguja.
3. Sub-Divisional Officer, Ramanujganj, District Surguja.
4. Commissioner, Bilaspur Division, Bilaspur.

Present : Shri P.P. Sahu, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. for the State.

ORAL ORDER

(Passed on 22nd June 2006)

The factual matrix of the case, in brief, is as follows: according to the petitioner, the father of the petitioner Kuldeep Sahai, by name, had encroached 5.088 hectares of Government land comprised in Khasra No. 78/4, 67/37, 67/36 and 67/43 situate in Ramanujganj, Tahsil Ramanujganj, District Surguja, which lands are (hereinafter shortly referred to as the "Schedule Lands") in the year 1953 and he was in actual possession and enjoyment of the schedule lands. It is also stated that he had built a pucca house and well in the schedule lands. Kuldeep Sahai died in the year 1973 and Thereafterwards, the petitioner has been in possession of the schedule lands.

(2) The petitioner made an application to the Sub Divisional Officer, Ramanujganj, District Surguja, the third respondent herein, for grant of the schedule lands. The S.D.O. registered the case i.e. No. 20/A-3/79-80

and by his order dated 11-03-1980 granted the schedule lands to the petitioner. When the matter stood thus, the Collector Surguja, District Surguja initiated *suo motu* proceedings to revise the order of the third respondent dated 11-03-1980. The petitioner objected to the initiation of the proceeding by the Collector by filing his reply dated 25-09-1984 as per Annexure P/3. However, the second respondent the Collector by his order dated 22-05-1990 set aside the order of the S.D.O. dated 11-03-1980. The petitioner preferred an appeal to the Commissioner of Revenue, who by his order dated 21-01-1991 (Annexure P/5), dismissed the appeal. Thereafterwards, even the revision preferred by the petitioner to the Board of Revenue was dismissed, as per, Annexure P/7 dated 20-05-1992. Feeling aggrieved by the above orders of the Collector, the Commissioner and the Board of Revenue; the present writ petition is filed.

(3) I have heard learned counsel for the parties. The main contention of the learned counsel for the petitioner is that the opinion of the Collector, Commissioner and the Board of Revenue that at the relevant point of time the S.D.O. had lacked legal competency to grant 5.088 hectares of land in favour of the petitioner and that he had authority to grant the land to an extent of five acres only, is factually incorrect. It was pointed out that though such specific plea was raised before the authorities below, that question was not fairly dealt with by them. It was pointed out that the Board of Revenue quite curiously in its order has pointed out that the circular dated 24-08-1979 does not prohibit the Collector from exercising the power of revision *suo motu* and that it has summarily rejected the jurisdictional issue raised by the petitioner. On the other hand, learned Government Advocate, sought to support the impugned order.

(4) I find perversity in the reasoning of the Board of Revenue. A copy of the circular dated 24-08-1979 which is produced at pages 39 to 43 as Annexure P/8, would clearly show that the District Collector has been empowered to revise the order passed by the Naib Tahsildar and Tahsildar only, and as per the said circular the orders passed by the S.D.O. could be revised *suo motu* only by the State Government. This position is not contested by the learned Government Advocate. Therefore, it is a clear case of misreading of the circular dated 24-08-1979 placed before it by the Board of Revenue. In that view of the matter, the orders passed by the District Collector, the Commissioner as well as the Board of Revenue can not be sustained. In that view of the matter, the writ petition is allowed and the impugned orders are quashed. No costs. However, it is made clear that this order shall not come in the way of the statutory authorities from taking appropriate steps/actions against the petitioner if the grant made in his favour by the S.D.O., Ramanujganj is otherwise illegal, in accordance with law.

Sd/-
Chief Justice